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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fiftieth session

SUMMARY RECORD OF THE 1187th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 March, at 10 a.m.

Chairman: Mr. GARVALOV

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Fourteenth periodic report of the United Kingdom of Great Britain and Northern Ireland (continued) (CERD/C/299/Add.9; HRI/CORE/1/Add.5/Rev.1)

1. At the invitation of the Chairman, the members of the United Kingdom delegation resumed their places at the Committee table.

2. Mr. LECHUGA HEVIA said that he would like to put three questions to the United Kingdom delegation. In the first place, it appeared that, under the Race Relations Act 1976 (CERD/C/299/Add.9, para. 11), advertisements indicating an intention to discriminate were, with few exceptions, unlawful (HRI/CORE/1/Add.5/Rev.1, para. 141). He would like to know what those exceptions were.

3. Secondly, he wondered why the Public Order Act 1986, which had strengthened legislation regarding incitement to racial hatred and under which a person using threatening, abusive or insulting words or behaviour or displaying, publishing or distributing such material was guilty of an offence (HRI/CORE/1/Add.5/Rev.1, para. 143), covered broadcasting "except by the British Broadcasting Corporation and the Independent Television Commission.". What was the reason for those two exceptions?

4. Thirdly, it would be interesting to know what the Government intended to do to prevent deaths in police custody and to punish those responsible. While recognizing the extreme seriousness of that situation, the Government nevertheless provided for the continued publication of annual statistics of such deaths (CERD/C/299/Add.9, paras. 35 and 36).

5. Mr. CHIGOVERA said that, while he understood the thinking that the absence of entrenched legal provisions in English law rendered it possible, in case of need, to modify or replace such provisions, he wondered how such an approach could be reconciled with the international obligations contracted by the United Kingdom. Did the principle of parliamentary sovereignty mentioned in paragraph 10 of the report mean that the United Kingdom's international obligations were subordinated to the sovereignty of the United Kingdom Parliament?

6. With regard to paragraphs 259-265 of the report, he was concerned about the future of the ethnic minorities of South Asian origin in Hong Kong after the transfer of sovereignty. At its forty-eighth session, the Committee had emphasized the fact that the status of those people did not entitle them to a right of abode in the United Kingdom, as contrasted with the "full citizenship status conferred on a predominantly white population living in another dependent territory", namely, the Falkland Islands. If, as paragraph 265 seemed to indicate, that difference in treatment was a product of the invasion of the Falkland Islands in 1982, the question arose whether such a criterion was well-founded. With respect, on the other hand, to the British Nationality (Hong Kong) Bill, referred to in paragraph 12 of the document submitted by the House Committee of the Legislative Council of Hong Kong, he would like to know

what the current situation of that instrument was and what its impact would be on the status of the ethnic minorities whose fate was of concern to the Committee.

7. Mr. FERRERO COSTA, having congratulated the United Kingdom on the regularity and punctuality with which it submitted its reports to the Committee, said that there were nonetheless some points in the fourteenth report that required clarification. It was good news that a Proposal for a draft Race Relations (Northern Ireland) Order in Council had been published (para. 15), but it would be interesting to know whether the Proposal had been adopted and what its precise content was and, particularly, to what extent it differed from the general Race Relations Act 1976. With respect to that text and the criticisms made by several non-governmental organizations (NGOs) concerning it, he asked why its drafters had not tried to remedy the inadequacies of the 1976 Act, why two exceptions had been added regarding public order and public security respectively and why social-welfare organizations in Northern Ireland did not seem to have the same rights with respect to the application of racial non-discrimination as other such organizations in the United Kingdom.

8. The maintenance of the United Kingdom Government's radical position with regard to article 4 of the Convention was difficult to explain in the light of current European realities and it would be useful if the delegation would give some precise details of the existence in the United Kingdom of organizations, political movements or groups inciting to racial discrimination or hatred. As for the incorporation of the Convention in national legislation, the United Kingdom had contracted international obligations, and the principle of parliamentary sovereignty took account neither of contemporary facts nor of modern concepts of international law. More accurate information would also be needed concerning the racial incidents that had occurred in recent years, the number of complaints lodged and the current situation of minorities in the country.

9. He did not see any reason to change the Committee's practice of asking States parties to supply information concerning the territories under their jurisdiction. In connection with Hong Kong, he would like to know whether, under the Sino-British Agreement, China would be required to apply the international conventions signed by the United Kingdom. According to articles 151 and 153 of the Basic Law of the future Hong Kong Special Administrative Region, it appeared that Hong Kong would have a certain autonomy in international matters. It would be desirable to have some details on that question.

10. Mr. VALENCIA RODRIGUEZ said he was pleased to see that the United Kingdom acknowledged in its report the existence of racial discrimination and xenophobia in Great Britain and that it was taking steps to combat those evils. In doing so, it was supported by practices and legislative provisions that were among the strictest and most comprehensive in Europe. He would like to obtain some information on the application of the Proposal for a draft Race Relations (Northern Ireland) Order in Council, which had been published in 1996 (CERD/C/299/Add.9, para. 15).

11. He would also like some clarifications on various points mentioned in the report, on the basis of the information contained in a document from the National Council for Civil Liberties entitled "Human Rights and Race Discrimination". Thus, with respect to the Race Relations Act 1976 which, he thought, had gaps and weaknesses due in particular to its subordination to other legislative provisions, he asked if steps had been taken to remedy the negative consequences of that situation on the campaign against discriminatory practices.

12. Thousands of acts of racial discrimination in matters of employment were committed daily in Great Britain against members of ethnic minorities, not least in the wording of offers of employment. The Committee would like to hear what the Government was doing to ensure the equality of all when it came to employment.

13. Several information sources had pointed out that mortality rates were particularly high in certain groups, such as the Irish population, as against the rest of the population of the United Kingdom. It would be useful to know what steps the authorities were taking to eliminate a phenomenon that amounted to discriminatory practices in health matters.

14. He also asked what the Government was doing to combat the anti-Semitic activities of neo-Nazi groups and attacks on the Traveller community, which was protected by the 1976 Act.

15. He wondered whether the United Kingdom considered that the right to freedom of expression and opinion could cover the barbaric, racist acts committed by some of its citizens. It was astonishing that only the organizations implicated in terrorist activities in Northern Ireland were banned, while neo-Nazi, anti-Semitic or Fascist paramilitary organizations such as the British National Party, Combat 18 or the National Front were free to continue their racist and discriminatory activities with complete impunity.

16. More than 10,000 people, mainly asylum-seekers, held under the Immigration Act were allegedly subjected to ill-treatment and abuse in British prisons. Was the Government doing anything to remedy that situation? Moreover, it was questionable whether the many discriminatory provisions in the new Asylum and Immigration Act were well-founded, such as the ban on new arrivals working for six months from their arrival in the United Kingdom.

17. Since the ethnic minorities represented only 1.5 per cent of the police forces and most policemen belonging to ethnic minorities resigned because of discrimination in matters of promotion, he asked what steps the Government was taking to prevent that form of discrimination.

18. On various pretexts, the police arrested the members of ethnic minorities more readily than other citizens. He wondered whether the United Kingdom Government did not consider that practice to be an intolerable form of discrimination.

19. The 1994 report on complaints about the police indicated that 48 people, most of them belonging to minority groups, had died in police custody, as

against 47 in the preceding year. He wished to know what were the results of the inquiry undertaken to shed light on the presumed responsibilities of the police in a number of those deaths.

20. It would seem that, in respect of employment, social situation, housing and health, minority groups were at a disadvantage as compared with other groups or lived in dire poverty. The Committee would like to know what the Government was doing to remedy that situation.

21. The CHAIRMAN, speaking as a member of the Committee and having expressed his appreciation of the high quality of the United Kingdom report, said he noted that the State party had a particularly restrictive interpretation of article 7 of the Convention. In that connection, he pointed out that the word "teaching" was to be construed in the widest sense and applied to the education and information not only of children and young people but also of judges, officials and teachers. It referred, in fact, to an apprenticeship in the culture of opposing racial discrimination and racism. That was the object of article 7 of the Convention which specified that the States parties undertook to promote understanding, tolerance and friendship among nations and racial or ethnic groups.

22. He had noticed that, in the report, the State party used various expressions such as "minority groups", "ethnic minorities" and "ethnic groups" and wondered if they corresponded to different factual situations. He would also like further information on the "specific training" received by members of the staff of the Immigration and Nationality Directorate of the Home Office (para. 59).

23. Mr. ABOUL-NASR said he had been most surprised that the situation of human rights in Hong Kong had, for some time, been receiving considerable attention, out of all proportion to the interest shown in the subject in the other dependent territories of the United Kingdom. He found it particularly astonishing that the occupying Power should have done so much recently to endow the territory with democratic institutions and advanced legislation for the protection of human rights. In view of the fact that the occupying Power had taken few initiatives along those lines in 140 years of presence in Hong Kong, he would like to know whether that sudden burst of energy was connected with the forthcoming transfer of Hong Kong to the jurisdiction of the People's Republic of China.

24. Mr. GILLESPIE (United Kingdom), having thanked the members of the Committee for their constructive comments on the submission of the fourteenth periodic report of the United Kingdom, said that the differing expressions used to indicate ethnic minorities did not reflect any substantive differences.

25. Mr. STEEL (United Kingdom) said he regretted that the wording of paragraphs 105 and 106 had given rise to some confusion concerning the incorporation of the provisions of the Convention in the domestic legislation of the United Kingdom. Those paragraphs did not mean that the United Kingdom was using the doctrine of parliamentary sovereignty to avoid its obligations regarding the application of the international instruments to which it was party. It simply took the view that the Convention committed the States

parties to achieving certain results and situations but did not dictate to them the ways and means to be used. More specifically, the United Kingdom had recourse to a mixture of legislative provisions and administrative measures. Its practice was not to incorporate international instruments in its domestic legislation, for reasons of clarity and evolutional flexibility. There was nothing in the Convention which obliged it to change its methods.

The meeting was suspended at 11.15 a.m. and resumed at noon.

26. Mr. STEEL (United Kingdom) said, with regard to the interpretative statement that the United Kingdom had made concerning articles 4 and 6 of the Convention at the time of ratification, that he thought it unlikely that his Government would review its interpretation of the Convention, especially with regard to article 4. In that connection, he invoked the principle whereby, in the terms of the Convention, Governments were free to exercise their own judgement, in the light of their own situations, where to strike the proper balance between the prevention of offensive behaviour and the need to guarantee freedom of expression, meeting and association. In response to a suggestion by Mr. Wolfrum, he said that, in the United Kingdom as in all democratic countries, the Government had no right to ban organizations or publications other than to the extent that it was empowered to do so by law. In his view, article 4 related only to the legislative measures that the contracting parties should adopt.

27. As for the right of individual petition set forth in article 14 of the Convention, his delegation had received no instructions to indicate that the Government had modified the position set out in paragraph 112 of the report (CERD/C/299/Add.9).

28. In reply to the questions asked by Mr. Wolfrum and Mr. Chigovera on the subject of ethnic minorities in Hong Kong having British nationality only, he recalled that, in his introductory statement, he had informed the members of the Committee that an act along the lines of their recommendations was to be promulgated before 1 July 1997. That would permit the Hong Kong ethnic minorities with British nationality only to acquire full British citizenship and the right of abode in the United Kingdom. As for the question, asked by Mr. Ferrero Costa, concerning the continuation of the international obligations contracted under international human rights instruments, he said that, under the Joint Declaration on the question of Hong Kong, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights would continue to apply to Hong Kong. Moreover, China had accepted the Convention on the Elimination of Racial Discrimination and committed itself to submitting reports. In reply to Mr. Aboul-Nasr, he said that, while he regretted that all the provisions to protect human rights in Hong Kong had not been adopted earlier, he wished to emphasize the importance of that development.

29. Mr. WONG (United Kingdom), replying to comments by the Country Rapporteur, Mr. Rechetov, and Mr. van Boven on the subject of the absence from the Bill of Rights Ordinance of a provision protecting the inhabitants of Hong Kong from racial discrimination practised by private persons, groups and organizations, referred them to paragraphs 257 and 258 of the report (CERD/C/299/Add.9). He nonetheless wished to state that the Hong Kong

Government was concerned about the legal implications such a provision could have for the private sector, which was more comfortable with detailed legislation than with general principles. It was better to adopt specific acts where a need was felt, as had been the case in the areas of discrimination against women and disabled persons and the protection of privacy.

30. With respect to Mr. Wolfrum's question concerning bilingualism in legislative and judicial matters, he replied that a 1987 Ordinance required the Hong Kong Attorney-General's Chambers to draft all new legislation in Chinese and English and to have translated into Chinese previous legislation enacted in English. To that end, an Advisory Committee had been set up to examine the Chinese versions of the English texts and to submit them to the Governor, who was responsible for declaring them authentic. All Hong Kong legislation should be bilingual by 30 June 1997. As for the use of Chinese in the courts, the Hong Kong Government was committed to putting in place a truly bilingual court system before 1 July 1997. Considerable progress had already been made. The use of Chinese by lawyers and magistrates had first been authorized in the magistrates' courts and then, gradually, in the other courts, the first appeal in Chinese having been heard on 13 February 1997. Moreover, in the criminal courts, summonses and charge sheets were currently drafted in both English and Chinese. The latter language would be used more and more in the courts, a development he welcomed. The legal system should be at the service of the general population and, for the first time, most of the inhabitants of Hong Kong would have access to the law in their own language.

31. In reply to a question by Mr. Wolfrum, he said that members of the staff of the University of Hong Kong who were of Chinese origin but habitually resided outside Hong Kong, China, Taiwan and Macau had expatriate status and the benefits linked thereto.

32. Mr. NEALE (United Kingdom), referring to paragraph 58 of the report, said that the Asylum and Immigration Act 1996 was intended to streamline asylum-seeking procedures, discourage illegal working and improve the system of housing and child-benefit allowances paid to persons from abroad. The Act did not change for the worse the measures benefiting asylum-seekers who were looking for work and had been waiting for six months for a decision on their application. Moreover, the Act in no way affected the Government's commitment to examine all applications for asylum, in accordance with the Convention relating to the Status of Refugees and other international instruments. The said Act enabled the Government to designate countries in which there was no serious risk of persecution and many of whose citizens sought asylum in the United Kingdom without a well-founded motive. The countries were Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania.

33. The 1996 Act did not authorize the persons concerned to appeal against their removal to a safe third country of the European Union until after their actual removal. Since 1996, Canada, the United States, Norway and Switzerland had been added to the countries of destination.

34. Many asylum-seekers arrived in the United Kingdom after transiting through a safe country, such as France or Germany. In that connection, he referred to the internationally accepted principle that a person should apply

for asylum in the first safe country which he reached, but added that the Act took account of certain exceptional circumstances such as the residence in the United Kingdom of close relatives.

35. With respect to article 8 of the Act in question, his Government took the view that one of the most insidious effects of tolerating illegal working was that it deprived persons with a right to live in the United Kingdom of chances of employment. Application of that provision would make it possible to improve the employment situation of persons of ethnic minority origin legally resident in the United Kingdom. The Commission for Racial Equality (CRE) (para. 63) was also doing its utmost, by the provision of guidance, to ensure that employers did not adopt discriminatory practices based on colour or race.

36. Furthermore, it should be emphasized that his Government had taken into account the concern expressed by the Glidewell Panel and that, when the bill for the said Act was under consideration, it had introduced a number of amendments which removed the word "immigrant" from article 8 and replaced it by the expression "person subject to immigration control".

37. Since February 1996, the Government had introduced various restrictions on the granting of social security benefits to asylum-seekers. Persons applying for asylum after having been allowed to enter the territory of the United Kingdom had no entitlement to social security benefits. On the other hand, those who applied for asylum on arrival in the United Kingdom were entitled to various benefits such as income support, housing benefit and council tax benefit. Entitlement ended if the application was refused.

38. Most in-country applicants originally entered the country as visitors or students. As such, they were required to demonstrate that they had the means to maintain themselves. His Government did not believe that they should be able to evade that requirement by claiming asylum. Nevertheless, anyone subsequently recognized, as a result of an appeal, as a refugee was entitled to the arrears of such benefits from the date on which he had submitted his application.

39. The Children Act 1989 ensured that the local authorities extended social protection to the children of asylum-seekers.

40. He stressed the fact that detention of asylum-seekers was a measure of last resort, was fully consistent with the United Kingdom's international obligations and affected only about 1.5 per cent of those seeking asylum. They were persons who, there were good grounds for believing, would not comply with the terms of temporary admission. If there was any indication that asylum was likely to be granted, the person was released immediately. The Asylum and Immigration Act also provided that anyone refused asylum could appeal against the decision and seek release on bail from the appellate authorities.

41. His Government considered that the steps it had taken to curb unfounded asylum applications had been successful. The number of applications for asylum in 1995 had been 43,965, whereas the number in 1996 had been only 27,930, a decrease of 36 per cent.

42. Mr. GILLESPIE (United Kingdom) said that the draft Race Relations (Northern Ireland) Order (para. 15) had been approved by both Houses of Parliament and would come into effect in May 1997. The draft reproduced virtually all the provisions of the Race Relations Act 1976, which applied in Great Britain, and would make racial discrimination unlawful in the fields of employment, training, education, housing and provision of goods and services. Individuals would have direct access to the courts and industrial tribunals.

43. Unlike the Race Relations Act applying in Great Britain, it defined, for legislative purposes, the Irish Traveller community as an ethnic group.

44. The Commission for Racial Equality had the task of supervising the working of the Race Relations Act 1976. His Government had taken account of the Commission's recommendation that it should be given the power to participate in the efforts made by individuals or associations to eliminate discriminatory practices. That power henceforth formed part of the Northern Ireland legislation. The Government intended to amend the Race Relations Act in the same way. It took the view that the draft Order guaranteed the level of security required by the particular situation in Northern Ireland. Generally speaking, the draft Order was modelled on the provisions of the Race Relations Act that applied in Great Britain. It would be noted that the draft gave specific responsibilities to the local authorities to enable them to promote good race relations at the local level. It emphasized the fact that the establishment of the Commission for Racial Equality did not absolve the local authorities from their responsibilities in relation to ethnic minority groups. Furthermore, the draft Order was designed to facilitate the campaign against any discrimination based on religion, political opinion, sexual orientation or marital status.

45. With reference to paragraphs 17 and 18 of the report, he specified that the research mentioned in paragraph 17 had been requested by the Northern Ireland Office Community Relations Unit. That research related to four major ethnic groups in Northern Ireland, namely, the Chinese, Indian and Pakistani communities and the Travellers. The research revealed that between 3,000 and 5,000 Chinese lived in Northern Ireland and constituted the most numerous ethnic community. The Government considered that that information would be very useful in determining its future action in the area.

46. The 1991 census had contained no questions relating to ethnic origin. Representatives of minority ethnic groups had been consulted so that the matter could be included in the forthcoming census in June 1997.

47. The Conference referred to in paragraph 18 had been held on 19 November 1996, with the financial support of the Department of Health and Social Security. More than 100 delegates had participated on behalf of public and charitable organizations and minority ethnic groups. The purpose of the Conference had been to encourage the ethnic minority groups to take part in the preparation of policies relating to their needs, particularly social needs.

The meeting rose at 1 p.m.